

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Dead Air Broadcasting Company, Inc.)	File Number: EB-03-ST-090
)	
Owner of Unregistered Antenna Structure)	NAL/Acct. No. 200432980001
Dillon, Montana)	FRN 0010640480
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: March 29, 2004

By the District Director, Seattle Office, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* ("NAL"), we find that Dead Air Broadcasting Company, Inc. ("Dead Air"), licensee of AM radio station KDBM and owner of an unregistered antenna structure in Dillon, Montana, apparently willfully and repeatedly violated Section 17.4(a) of the Commission's Rules ("Rules") by failing to register the antenna structure.¹ We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended,² that Dead Air is apparently liable for a forfeiture in the amount of three thousand dollars (\$3,000).

II. BACKGROUND

2. On May 16, 2002, an agent from the Seattle District Office conducted an inspection of AM radio station KDBM. At the time of the inspection, no antenna structure registration number was displayed at the base of the structure. The structure is approximately 80 meters in height (265 feet) and is required to be lighted and painted. The structure is located at 45°14'13" north latitude and 112°38'32" west longitude. At the time of the inspection, the Vice President for Dead Air could not locate or produce a registration for the subject tower. The structure is owned by Dead Air, the licensee of KDBM.

3. On June 13, 2002, the Seattle District Office issued a Notice of Violation ("NOV") to Dead Air, for violation of Section 17.4(g) of the Commission's Rules, for failure to post the ASR number at the base of the structure.

¹ 47 C.F.R. § 17.4(a).

² 47 U.S.C. § 503(b).

4. On June 27, 2002, the Seattle District Office received a response to the NOV. The response stated that following an extensive review of the files, no current Antenna Structure Registration number had been found. Evidence was found that the previous owners filed an ASR application in 1998, but Dead Air had no confirmation that it was received. The response further stated that Dead Air would apply for an ASR number and post it in accordance with the Rules.

5. On August 9, 2002, Dead Air submitted a supplement to the June 24, 2002, reply to the NOV, and stated that Dead Air had completed a new FCC Form 854 that duplicated the original registration that was submitted by the previous owners on October 28, 1996.

6. On March 26, 2003, agents from the Seattle District Office conducted an inspection of the KDBM transmitter site. At the time of the inspection, no antenna structure registration number was displayed at the base of the structure.

7. A follow-up search of the Antenna Structure Registration database on April 3, 2003, and April 4, 2003, revealed no registration for the antenna structure.

8. On October 22, 2003, agents from the Seattle District Office conducted an inspection of the KDBM transmitter site. At the time of the inspection, no antenna structure registration number was displayed at the base of the structure.

9. A follow-up search of the Antenna Structure Registration database on February 3, 2004, revealed no registration for the antenna structure.

III. DISCUSSION

10. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission there under, shall be liable for a forfeiture penalty.³ The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly and the term "repeated" means the commission or omission of the Act more than once or for more than one day.⁴

11. Generally, the Rules require that antenna structures that are greater than 200 feet in height comply with painting and lighting specifications designed to ensure air safety.⁵ Antenna structure owners

³ 47 U.S.C. § 503(b).

⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991). Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to Section 503(b), provides: "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

⁵ 47 C.F.R. § 17.21.

must register antenna structures with the Commission and post ASR numbers at the base of antenna structures to allow for easy contact if problems arise.⁶ The Rules requiring antenna structure registration for all antenna structures that may pose a hazard to air navigation have been in effect since 1996.⁷ The Commission has repeatedly advised antenna structure owners that all existing, unregistered antenna structures subject to the Rules must be registered *immediately* or the owners will face a monetary forfeiture or other enforcement action.⁸

12. Specifically, Section 17.4(a) of the Rules requires that the owner of any proposed or existing antenna structure that requires notice of proposed construction to the Federal Aviation Administration must register the structure with the Commission. Dead Air owns the antenna structure used by AM radio station KDBM in Dillon, Montana. This structure requires notice of proposed construction, and therefore, Commission registration, because the structure's height exceeds 200 feet.⁹ Dead Air is aware of the responsibility and obligation to register the antenna structure. Dead Air received a *Notice of Violation* in June of 2002, for failing to register the structure and Dead Air's President represented to the Commission in June of 2002, that the structure would be registered. As of February 3, 2004, the antenna structure had not been registered.

13. Based on the evidence before us, we find that Dead Air apparently willfully and repeatedly violated Section 17.4(a) of the Rules by failing to register its antenna structure with the Commission.

14. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines ("Forfeiture Policy Statement")*¹⁰ and Section 1.80 of the Rules,¹¹ the base forfeiture amount for failure to file required forms or information (e.g., failure to file an antenna registration form) is \$3,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.¹² Considering the entire record and applying the factors listed above, this case warrants a \$3,000 forfeiture.

⁶ 47 C.F.R. § 17.4.

⁷ Antenna structure owners were required to register existing antenna structures during a two-year filing period between July 1, 1996 and June 30, 1998, and to register new antenna structures prior to construction. *Streamlining the Commission's Antenna Structure Clearance Procedure*, 11 FCC Rcd 4272 (1995).

⁸ Subsequent to the expiration of the filing period, the Commission staff issued a *Public Notice* warning antenna structure owners to register any unregistered antenna structures subject to our requirements immediately or face possible monetary forfeitures or other enforcement action. *Public Notice*, "No-Tolerance Policy Adopted for Unregistered Antenna Structures," 1999 WL 10060 (WTB rel. Jan. 13, 1999). In addition, in June and July 1999, the Wireless Telecommunications Bureau sent letters to licensees informing them that the Commission had no valid registration for their antenna site and that owners and, to the extent they were liable, tenants could face monetary forfeitures for antenna structures that remained unregistered.

⁹ 47 C.F.R. § 17.7(a).

¹⁰ 12 FCC Rcd 17087 (1997), *recon. denied* 15 FCC Rcd 303 (1999).

¹¹ 47 C.F.R. § 1.80.

¹² 47 U.S.C. § 503(b)(2)(D).

ORDERING CLAUSES

15. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,¹³ and Sections 0.111, 0.311 and 1.80 of the Rules,¹⁴ Dead Air Broadcasting Company, Inc., is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of three thousand dollars (\$3,000) for willful and repeated violation of Section 17.4(a) of the Rules by failing to register its antenna structure with the Commission.¹⁵

16. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, Dead Air Broadcasting Company, Inc., SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

17. . Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁶

18. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street S.W., Washington D.C. 20554, Attn: Enforcement Bureau-Spectrum Enforcement Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

19. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

20. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Spectrum Enforcement Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment

¹³ 47 U.S.C. § 503(b).

¹⁴ 47 C.F.R. §§ 0.111, 0.311, 1.80.

¹⁵ 47 C.F.R. § 17.4(a).

¹⁶ 47 C.F.R. § 1.1914.

A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

21. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Dead Air Broadcasting Company, Inc., 610 North Montana, Dillon, Montana 59725.

FEDERAL COMMUNICATIONS COMMISSION

Dennis Anderson
District Director, Seattle Office

Enclosure: FCC List of Small Entities, October 2002